IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1485 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GOPAL LALLU SINCE DECEASED THROUGH HIS HEIRS AND LEG REP.

Versus

RUSTAMJI KAIKHUSRU GANDHI

Appearance:

1. Civil Revision Application No. 1485 of 1980
UNSERVED-EXPIRED (N) for Petitioner No. 1
MR AB MUNSHI for Petitioner No. 1/1-1/3
MR NV ANJARIA for Respondent No. 1-2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/08/2001

C.A.V JUDGEMENT

This revision under Sec.29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('the Act' for short) by the original defendant-tenant is

filed being aggrieved by the judgment and decree dated 30-4-1980 rendered by the learned District Judge, Valsad at Navsari in Regular Civil Appeal No.12 of 1977 whereby he has, by allowing the said appeal of the plaintiffs-landlords, set aside the judgment and decree dated 16-11-1976 rendered by the learned Civil Judge (J.D.), Valsad in Civil Suit No.60 of 1974 dismissing the suit filed by the original plaintiffs-landlords for eviction.

2. During the pendency of this revision, as the petitioner died, his heirs and legal representatives were brought on record as petitioner Nos.1/1 to 1/3.

3. The facts in short giving rise to the present revision are as under:

3.1 Plaintiff No.1 was the owner of the property bearing survey No.592-B admeasuring 21 Gunthas with pot Kharaba situated in the sim of Valsad Taluka which was gifted to plaintiff Nos.2 and 3 vide Gift Deed dated 4-8-1970. It is the case of the plaintiffs from very beginning that an open land admeasuring 10'x12' was rented out to the defendant for constructing a kachcha hut on 1-11-1957 at a monthly rent of Rs.2/- for a period of 11 months only and rent was agreed to be paid regularly for which, rent note was executed by the defendant on the same day i.e. on 1-11-1957. Said hut was constructed by the defendant and was staying there with his family as a statutory tenant even after the period of 11 months. It is the further case of the plaintiffs that the defendant was not paying the rent from the beginning i.e. from 1-11-1957 thereby he became tenant in arrears from 1-11-57 to 31-7-1972 and, therefore, a suit notice dated 21-6-1972 was issued to him on 3-7-1972 by registered post as well as under certificate of posting and the letter sent by registered post was returned back as refused. Thereafter, copy of the said notice was affixed on the suit hut on 9-7-1972, but he did not comply with the suit notice. He also committed breach of conditions by erecting new construction on adjoining land which was not rented out to him and ultimately suit was filed against him before the Court which was registered as Civil Suit No.60 of 1974.

3.2 The defendant came out with the specific case by way of written statement at Ex.11 contending that the suit property was originally agricultural land and other huts situated there were occupied by the farm labourers and possession thereof has been taken by the plaintiffs

forcibly. It was denied that he had any knowledge of the property having gifted by plaintiff No.1 to plaintiff Nos.2 and 3 and he was not informed by any of them. According to him, suit hut admeasured 34'X27' in length and he did not make any alteration or additions or new construction in it. It was stated by him that initially rent was fixed only at 50 Paise per month, subsequently it was increased to Re.1/- per month and thereafter it was raised to Rs.2/-per month and he paid rent upto 31-1-1969 and it became due only from 1-2-1969 and not as averred by the plaintiffs from 1-11-1957. Though he was ready and willing to pay the said rent, plaintiff No.1 refused to accept the same and, therefore, he remitted the rent by way of money orders on 22-7-1969, 18-8-1969, 23-9-1969, 18-10-1969 and 17-12-1969 which were also not accepted by the plaintiff No.1 without showing any cause. It was further contended that no rent note was ever executed between him and the plaintiff No.1 and a false evidence of service of suit notice was got up by the plaintiffs. According to him, no envelope of the suit notice was ever produced before him for service or delivered to him. He also denied to have seen any suit notice having affixed at his hut by the plaintiffs as he and his family members were permanently residing there and hence, it was a got up story. It was further contended that monthly rent of 50 Paise was the standard rent and not Rs.2/- as averred by the plaintiffs.

3.3 Necessary issues for determination were raised by the learned Trial Judge at Ex.13. To prove the case, plaintiffs examined two witnesses namely, Firoz Darasha and Mohammadbhai Ismailbhai. None of the plaintiffs came into the witness box. Whereas defendant-tenant Gopal Lallu entered into the witness box and deposed at Ex.41. After hearing the learned advocates appearing for the respective parties and considering the oral as well as the documentary evidence on record, Trial Court vide judgment and decree dated 16-11-1976 came to the conclusion that plaintiffs were the owners of the suit land as stated in the plaint. It held that defendant was not a tenant in arrears of rent from 1-11-1957 and rent was due only from 1-2-1969 and that there was no encroachment upon the suit hut by the defendant.

3.4 Being aggrieved and dissatisfied with said judgment and decree, plaintiffs preferred Regular Civil Appeal No.12 of 1977 in the court of learned District Judge, Valsad at Navsari. Said appeal was allowed and judgment and decree dated 16-11-1976 of the Trial Court was set aside, which is giving rise to file the present Civil Revision Application.

4. Heard learned advocate for the petitioner-tenant, Mr.A.B.Munshi and learned advocate for the respondents, Mr.N.V.Anjaria. Also gone through the oral as well as documentary evidence shown to me by the learned advocate for the parties.

5. Mr.Munshi, learned advocate for the petitioner-tenant has argued that Trial Court has dismissed the suit of the plaintiff-landlord considering all documentary as well as oral evidence on record by elaborate reasonings which runs from para 4 onwards. He has further argued that Trial Court has not accepted the say of the plaintiffs that the defendant was a tenant from 1-11-1957 but from 1953. It has also not accepted that rent note was executed by the defendant on the same day and held that rent is not due from 1-11-57 to 31-7-1972 as rent was paid upto 31-1-1969. It has also held that the landlord, without showing any cause, has not accepted various money orders sent by the tenant and dismissed the suit on all counts including the ground of arrears of rent. According to him, lower Appellate Court has reversed the judgment of the Trial Court on the basis of assumption and has wrongly come to the conclusion that landlord has refused to accept the money orders as the amount fell short of then due. Moreover, according to him, findings have been arrived at by the Appellate Court without the support of any evidence on record. Finally it was contended that lower Appellate Court ought to have properly appreciated the judgment reported in XV G.L.R. 598 and ought to have dismissed the appeal considering the facts and circumstances of the case.

6. Whereas Mr.Anjaria, learned advocate for the respondents-landlords has argued that suit notice was duly served upon the petitioner-tenant as it was refused. It is a settled law that refusal of service is a valid service in the eye of law. According to him, tenant is in arrears of rent at the most from 1-2-1969, if not from 1-11-1957 and though notice was duly served upon him, he has not tendered the rent nor raised any dispute regarding the standard rent within stipulated time and, therefore, lower Appellate Court has rightly interfered with the judgment and decree of the Trial Court.

6.1 Relying upon the cases of Mahendra Raghunathdas Gupta Vs. Vishvanath Bhikaji Mogul and Others (1997) 5 S.C.C. 329 and also of N.M.Engineer and Others Vs. Narendra Singh Virdi and another, AIR 1995 S.C. 448, he has argued that a well reasoned judgment has been delivered by the Appellate Court which does not require

any interference by way of revisional jurisdiction.

7. It appears that the suit of the present respondents-original plaintiffs was dismissed by the Court below on all the points against which, they have preferred Regular Civil Appeal No.12 of 1997 wherein learned District Judge, Valsad at Navsari has reversed the judgment and decree passed by the Trial Court dismissing the suit of the plaintiff and has decreed the suit of the plaintiffs only on the ground that the present appellant-tenant is a tenant in arrears for more than six months on the date of notice and that he has failed to pay the same within one month from the date of receipt thereof. Against that, present Civil Revision Application has been preferred by the petitioner-tenant. Now the only point to be dealt with by this Court is whether the present petitioner-original defendant is in arrears for rent for more than six months from the date of notice and that he failed to pay the same within one month from the date of receipt thereof.

8. Keeping the above aspects in mind, I proceed further. The aforesaid point has been dealt with by the Trial Court from para 4 onwards in the judgment rendered in Civil Suit No.60 of 1974 by holding in favour of the tenant that he has shown willingness to pay the rent by money order, but the same was refused by and on behalf of the landlord. In arriving at the above conclusion, the Trial Court has considered the oral evidence of general power of attorney holder of plaintiff No.1 and also documentary evidence namely, rent note, money order coupons showing refusal of the rent by the addressee, etc. However, the Appellate Court took a contrary view holding that the tenant is in arrears of rent, but said conclusion arrived at by the Appellate Court is not on the basis of evidence on record.

9. To prove the case, the plaintiffs have examined one Faramroz Dhinshaji at Ex.25, who is the general power of attorney holder of plaintiff No.1. It was deposed by him that said general power of attorney has been given to him by the plaintiff No.1 on 29-10-1968 while the property in question has been gifted by plaintiff No.1 to plaintiff Nos.2 and 3 by way of Gift Deed dated 4-8-1970. In short, he came in administration of the property on 29-10-1968 and plaintiff Nos.2 and 3 have become owners of the property on 4-8-1970. Therefore, the only person who can throw light on the tenancy transaction and who can prove the case of the plaintiffs is the plaintiff No.1. However, he has lost interest in the property on 4-8-1970 after having has gifted the property. Neither

the plaintiff No.1 nor the plaintiff Nos.2 and 3 has entered into witness box to prove the same. But plaintiff Nos.2 and 3 have tried to prove the same through general power of attorney holder of plaintiff No.1 who admittedly came into picture in the year 1968.

10. Considering all these aspects, Trial Court has rightly evaluated the evidence of plaintiffs' witness, the general power of attorney holder. It has been established from the record that the plaintiffs were not in a position to prove that the defendant was the tenant of the suit property from 1957 onwards. The general power of attorney holder has deposed that he was present at the time when the rent note was executed and attested by the witnesses. If it is compared with his oral evidence, then prima facie it would be clear that at the relevant time, he might have been minor and as per the evidence on record, his name came in picture for the first time in the month of October, 1968. Learned Trial Judge, while discussing the alleged rent note in detail at paras 9, 10 and 11 of the judgment, has not considered the rent note executed by the defendant-tenant as a true document. On elaborate discussion, he came to the conclusion that stamp paper on which the alleged rent note has been executed was purchased on 7-5-1949 and name of one Janu Manchhu was written in first para on line No.3 of the said rent note. Later on it has been removed by way of putting line of ink and after that, name of Gopal Lallu was written and same thing was repeated at the end of rent note. As I have discussed earlier, plaintiff No.1, who is the proper person to prove the rent note, has chosen not to enter into witness box, but the person, who has tried to prove the same, is not having knowledge about the same and the plaintiffs have tried to convert the rent note of one Janu Manchhu, which was executed in the year 1949, by replacing it as having executed by the petitioner-tenant in the year 1957 and for that, stamp paper purchased in May, 1949 has been used by them which admittedly has not been purchased by the tenant and, therefore, Court below has rightly held that no reliance can be placed on the said rent note. Similarly, it has been established from the record that present petitioner had paid the rent to the landlord but as the landlord was not accepting the same, he has remitted the rent through money orders which has been produced and proved by him by Exs.30 to 34 and it appears that the amount of rent remitted through money order has not been accepted by the landlord without any justifiable cause. It has been held in (1975) XVI GLR 1002 as under:

"If a landlord refuses to accept the amount

> tendered by his tenant either by money order or in any other recognized mode of payment without any justifiable cause, the tenant is not bound nor is he under an obligation to go on repeating the remittance of the same amount over and over again. A landlord cannot try to take advantage of his own wrong and seek the recovery of possession of the premises. The Rent Act is the measure which is intended to protect the tenants. It is not a trap for the landlord to lay in order to draw his tenant in.

Aforesaid observations have been reiterated by this Court while dealing with the case of Mohanlal Jeram Mistry (Since Deceased) Through His Heirs & ORs. Hemkunver Mohanlal & Ors. Vs. Harilal Motichand Maniyar (Decd.) Through His heirs Jayantilal Harilal Maniyar & Ors., 1993(1) GLR page 411.

11. In the present case, it appears that though the tenant has remitted the rent through money orders, same has been refused to accept by the landlord without any justifiable cause and hence, tenant is not obliged to go on repeating the said remittance. Moreover, trial Court on appreciation of evidence has held that even suit notice is not served upon the defendant. Though the plaintiffs have tried to prove the same by way of oral evidence, it could not be proved before the trial Court and it was held by the Court below that the premises in question have not been let out to the petitioner-tenant in 1957 but in 1953. Though it was admitted by the witness of the plaintiffs that plaintiffs used to issue rent receipts to the tenants, nothing of the sort has been produced on record. It was further held by the trial Court that petitioner-tenant is in arrears of rent from 1-2-1969 only and not from 1-11-1957 and that he is not a tenant in arrears. All these findings of the Trial Court have been reversed by the Appellate Court by holding that the landlord was justified in refusing the money at that point of time as the amount fell short of then due. I am of the opinion that the findings of the appellate Court is not based on any evidence but on assumption because the person, who has refused to accept the money orders i.e. the plaintiff No.1, has chosen not to step into witness box to explain as to why he has refused to accept the money orders and it is not the case of the plaintiffs that the amount sent by the defendant-tenant was less than due to be paid. I may say with respect that the learned appellate Judge ought to have closely read the observation in the ruling of this

Court in the case of Hasmukhlal Babubhai Vs. Vithalbhai, XV G.L.R. page 598 and ought not to have lightly brushed aside it by differentiating it in a technical manner. In view of the above, while fully agreeing with the the principles laid down by the Apex Court in the above reported cases relied upon by the learned advocate for the respondents, I am of the opinion that these principles will not come in rescue of the respondents and hence, I have not discussed them in detail.

12. In view of the foregoing discussion, I am of the opinion that the learned Appellate Judge was not justified in passing the decree of eviction against the petitioner-tenant and hence, the judgment and decree of the Appellate Court require to be set aside and this Civil Revision Application deserves to be allowed.

13. Thus, this Civil Revision Application is allowed. Judgment and decree dated 30-4-1980 passed by the learned District Judge, Valsad at Navsari in Regular Civil Appeal No.12 of 1977 to the extent of directing the tenant to hand over the possession of the rented premises to the landlords after removing the superstructure are quashed and set aside. The judgment and decree passed by the trial Court are restored. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)
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